IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	)	Docket No.: 30644
SANTOS, Susan R. et al.	)	Group Art Unit No.: 3623
Serial No.: 09/751,858	)	Examiner: MEINECKE DIAZ, Susanna
Filed: December 29, 2000	)	Confirmation No.: 8518
Title:	)	
A SYSTEM AND METHOD FOR MONITORING AND ANALYZING DATA TRENDS OF INTEREST WITHIN AN ORGANIZATION	)	

REPLY BRIEF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	)	Docket No.: 30644
SANTOS, Susan R. et al.	)	Group Art Unit No.: 3623
Serial No.: 09/751,858	)	Examiner: MEINECKE DIAZ, Susanna
Filed: December 29, 2000	)	Confirmation No.: 8518
Title:	)	
A SYSTEM AND METHOD FOR MONITORING AND ANALYZING DATA TRENDS OF INTEREST WITHIN AN ORGANIZATION	)	

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S REPLY BRIEF

In response to the Examiner's Answer dated August 29, 2006, Appellant's Reply Brief in accordance with 37 C.F.R. § 41.41 is hereby submitted.

The requisite fee of $500.00 as required by 37 C.F.R. § 41.20 was previously submitted. Any additional fee which is due in connection with this application should be applied against Deposit Account No. 19-0522.

Respectfully submitted,

By _____

Thomas B. Luebbering, Reg. No. 37,874
HOVEY WILLIAMS LLP
2405 Grand Boulevard, Suite 400
Kansas City, MO 64108
(816) 474-9050

ATTORNEYS FOR APPELLANTS

Argument

The Examiner's Interpretation of the Claim Language "make workload adjustments thereto" is Incorrect

The Examiner argues that the claim language "make workload adjustments thereto" refers to "the fact that workload adjustments are made based on or in light of the formatted data," and further argues that the "claim does not expressly recite that workload adjustments are directly made to data." Examiner's Answer, page 14. Appellants strongly disagree. The Examiner is attempting to equate two entirely different concepts: making workload adjustments to data and adjusting an actual workload of a worker. The Examiner's interpretation of the claim language at issue is patently incorrect and contrary to the teachings of the application.

The Application clearly teaches that the claim language "a computer-readable medium encoded with a code segment operable to enable a computer to perform date gap analysis and control chart analysis on the formatted data and make workload adjustments thereto" means that workload adjustments are made to data. As explained on page 11 of the Application, for example,

> to make [a workload] adjustment, the present invention computes the daily cumulative total number of FTEs for each day, so that the difference between the cumulative number at the time of the event and the cumulative number at the time of the previous event represents the number of FTE-days between accidents. If a sudden surge in accidents was proportional to a sudden rise in employees, then the FTE-days between accidents would show a flat trend. If not, then the signal persists even after an increase in number of employees has been taken into account.

Clearly, the application teaches making workload adjustments to data by adjusting the data to reflect full time employee (FTE) days, not adjusting an actual workload of a worker. This must be the case as the workload adjustments discussed in the quote above reveal trends in the data related to the number of full time employees. Therefore, the application teaches making workload adjustments to data and the Examiner's interpretation of the claim language "make workload adjustments thereto" is incorrect.

The Examiner's Reasoning Reveals the Impermissible Use of Hindsight Reconstruction

The Examiner's arguments asserted in the Examiner's Answer are further evidence that the invention of claim 1 is not obvious to one of ordinary skill in the art. The Examiner argues, for example, that the "claim does not expressly recite that workload adjustments are directly made to the formatted data. Furthermore, such an interpretation would not make sense since the event data does not comprise workload data *per se*." Examiner's Answer, page 14. Here, the Examiner is admitting that she does not understand how a workload adjustment can be made on data that does not include "workload data *per se*." However, the application at page 11, lines 7–23 clearly and unambiguously explains how workload adjustment can be made on data that does not include workload data *per se*:

> The workload adjustment code segment 22 adjusts for workload, so that, when a signal is identified, it can be determined whether workload was a factor in causing the signal. There are a variety of measurements that might require such workload adjustments and a variety of adjustment factors. For example, a sudden surge in the number of workplace accidents might be related to the number of full-time employees (FTEs) or to the number of hours worked. In this situation, to make an adjustment, the present invention computes the daily cumulative total number of FTEs for each day, so that the difference between the cumulative number at the time of the event and the cumulative number at the time of the previous event represents the number of FTE-days between accidents. If a sudden surge in accidents was proportional to a sudden rise in employees, then the FTE-days between accidents would show a flat trend. If not, then the signal persists even after an increase in number of employees has been taken into account. A similar calculation using labor hours would give the number of hours between accidents. If a slowdown in the rate of accidents was associated with a comparable decline in the amount of work done, then this adjustment should show a flat trend.

As explained in this portion of the specification, workload adjustments determine whether workload was a factor in causing a signal. Thus, it makes perfect sense that the event data does not include workload data *per se* because the analysis involves determining ***whether*** workload was a factor in causing the signal—and there would be no need to perform an analysis to determine whether workload was a factor in causing a signal if the signal represented workload data *per se*. Thus, the Examiner's arguments reveal that the Examiner is using the application as a blueprint and guide to try to force the prior art to teach something that it clearly does not teach.

The Examiner points out that the details quoted above from the application specification are not recited in the claims and therefore will not be read into the claims. Appellants agree. Appellants refer to these teachings merely as evidence that the Examiner's interpretation of the meaning of "workload adjustments to data" is incorrect and should not be read into the claims as limitations. Curiously, the Examiner is willing to read into the claims limitations that are not recited in the claims or even anywhere in the application. The Examiner argues, for example, that the "claim does not expressly recite that workload adjustments are directly made to the formatted data," and that "the Examiner has made the interpretation that making 'workload adjustments thereto' refers to the fact that workload adjustments are made based on or in light of the formatted data." Examiner's Answer, page 14. Thus, because the Examiner does not believe the workload adjustments are made to data, she argues that the adjustments must be made to an actual workload of a worker. However, the claims do not recite adjusting workload of workers, nor does the application specification. The Examiner is reading a limitation into the claims that is not found anywhere in the application.

The Examiner's Arguments that Appellants do not Address the Prior Art Rejections as a Whole are Without Merit

In response to Appellants' argument that "neither of the prior art references relied upon by the Examiner mention anything remotely related to making workload adjustments to data . . ." as recited in claim 1, the Examiner asserts that "Appellant does not explain how the rejection *as a whole* (including this particular statement of Official Notice) fails to address the limitation in question." Examiner's answer, page 12 (*emphasis in original*).

Appellants strongly disagree. From the paragraph beginning at the bottom of page 9 of the Appeal Brief through the last full paragraph of page 11, for example, Appellants explained in detail why the Examiner's rejection as a whole fails to address the limitation in question. In that section of the specification, Appellants explained that neither Jensen nor Pfeiffer mention anything remotely related to making workload adjustments to data. Appellants also explain what Jensen and Pfeiffer do teach, and how those teachings differ from the application invention. Appellants explain that the modification of Jensen suggested by the Examiner is incompatible with the teachings of Jensen, and further explain that even if all of the Examiner's arguments are assumed to be correct, the

Examiner's conclusions are still incorrect. Regarding the statement of Official Notice mentioned by the Examiner (that "it is old and well-known in the art of workplace management to adjust workloads accordingly in response to dangerous working conditions"), Appellants clearly explain in the second full paragraph of page 11 of the Appeal Brief that this statement of Official Notice does not cure the defects of Jensen and Pfieffer because the statement of Official Notice relates to adjusting actual workloads of workers rather than making workload adjustments to data.

Regarding the statement of official notice mentioned above, the Examiner argues that it would be obvious to adjust actual workloads of workers based on incident report information, but fails to recognize that this argument, even if assumed to be true, cannot cure the deficiencies of Jensen and Pfeiffer. Even if we assume that "it is old and well-known in the art of workplace management to adjust workloads accordingly in response to dangerous working conditions" and that "the computer automation of a well-known manual process is old and well-known in the art," as asserted by the Examiner, indiscriminately combining these assertions with Jensen and Pfeiffer as suggested by the Examiner merely results in a system wherein actual workloads of workers are automatically adjusted in response to a dangerous condition, not a system wherein workload adjustments are made to data.

The Examiner argues that "one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references." *See, e.g.*, Examiner's Answer, page 15. However, in asserting this argument the Examiner is trying to inappropriately shift the burden of proof to Appellants. The Examiner has the initial burden of factually supporting a *prima facie* case of obviousness, and only after the Examiner establishes a *prima facie* case of obviousness does the burden shift to the applicant to submit evidence of nonobviousness. MPEP 2142.

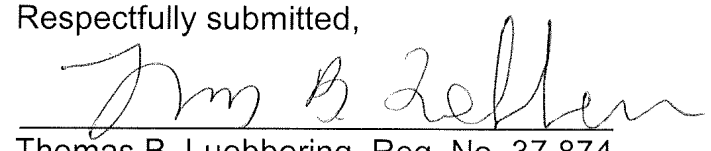
As part of the *prima facie* case of obviousness, the Examiner must demonstrate that "the prior art reference (or references when combined) . . . teach or suggest all the claim limitations." *Id*. Thus, if the Examiner fails to demonstrate that the prior art references teach or suggest all the claim limitations, she has not established a *prima facie* case of obviousness. In the present case, the Examiner has clearly not demonstrated that the prior art references teach or suggest all the claim limitations. Regarding the language "and

make workload adjustments thereto" of claim 1, the Examiner concedes that Jensen does not disclose this limitation, but relies on official notice that "it is old and well-known in the art of workplace management to adjust workloads accordingly in response to dangerous working conditions." Examiner's Answer, page 5. The Examiner concludes that "it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Jensen to generate corrective actions involving workload adjustments . . ." *Id.*

Appellants have demonstrated not only that the official notice relied upon by the Examiner does not address the limitation in question, but also that neither Jensen nor Pfeiffer discloses anything similar to the limitation in question. *See, e.g.*, Appeal Brief, pages 9–11. Thus, Appellants have shown that the element "and make workload adjustments thereto" is not disclosed in either of the prior art references nor in the official notice. The Examiner clearly has not established the requisite *prima facie* case of obviousness because she has failed to demonstrate that the prior art references teach or suggest all the claim limitations. Appellants have rebutted the Examiner's argument that the element "and make workload adjustments thereto" is disclosed in an official notice, as well as the modification to Jensen proposed by the Examiner. Rather than addressing Appellants' arguments, however, the Examiner asserts that "one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references." Appellants have rebutted all of Examiner's arguments and are not required to address arguments not asserted by the Examiner. It is the Examiner's burden to show that all claim limitations are taught or suggested by the prior art, and Appellants have demonstrated that the Examiner has not satisfied this burden. By arguing that "one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references," the Examiner is requiring that Appellants address arguments not presented by the Examiner.

Accordingly, reversal of the Examiner's rejections is proper, and such favorable action is solicited.

Respectfully submitted,

By 

Thomas B. Luebbering, Reg. No. 37,874
HOVEY WILLIAMS LLP
2405 Grand Boulevard, Suite 400
Kansas City, MO 64108
(816) 474-9050

ATTORNEYS FOR APPELLANT